

## ARTICLE 51-02

### DAIRY INDUSTRY REGULATIONS

#### Chapter

|          |   |
|----------|---|
| 51-02-01 | Milk Classification - Reporting and Auditing Procedures |
| 51-02-02 | Disruptive Trade Practices                              |
| 51-02-03 | Farm to Plant Hauling Rates                             |
| 51-02-04 | Termination of Dairy Farmer Purchasing Agreements       |

#### CHAPTER 51-02-01

#### MILK CLASSIFICATION - REPORTING AND AUDITING PROCEDURES

#### Section

|             |   |
|-------------|---|
| 51-02-01-01 | Definitions   |
| 51-02-01-02 | Licenses Not Transferable   |
| 51-02-01-03 | Assessments on Sale to a Distributor by a Processor                 |
| 51-02-01-04 | Deductions by Processors From Dairy Farmers                         |
| 51-02-01-05 | Invoices on Wholesale Sales   |
| 51-02-01-06 | Tests by Department of Agriculture                                  |
| 51-02-01-07 | Retention of Composite Samples                                      |
| 51-02-01-08 | Record of Butterfat Tests   |
| 51-02-01-09 | Monthly Statement from Processors to Dairy Farmers                  |
| 51-02-01-10 | Monthly Report by Processors to the Board                           |
| 51-02-01-11 | Monthly Dairy Farmer Statement                                      |
| 51-02-01-12 | Monthly Report of Foreign Milk Coming Under NDCC Chapter 4-18.1     |
| 51-02-01-13 | Monthly Report of Distributors, Jobbers, and Dairy Farmer-Processor |
| 51-02-01-14 | Annual Report of Wholesale Accounts                                 |
| 51-02-01-15 | Payment of Dairy Farmers by Processors                              |
| 51-02-01-16 | Auditing Procedure  |
| 51-02-01-17 | Base or Quota Plans   |
| 51-02-01-18 | Pooling   |
| 51-02-01-19 | Allocation of Dairy Farmer Milk                                     |
| 51-02-01-20 | Allocation of Other Source Milk                                     |
| 51-02-01-21 | Rejection of Dairy Farmer Milk                                      |
| 51-02-01-22 | Interpretation  |

**51-02-01-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Base deliveries" means the actual amount of milk delivered by a group of base or quota holding dairy farmers which is equal to the bases specified or the actual deliveries, whichever is less.
2. "Base or quota" means a specified amount of milk which a dairy farmer agrees to supply periodically and which a distributor agrees to purchase,

and may be expressed in terms of whole milk or the components of whole milk.

3. "Dairy farmer-processor" means any dairy farmer who produces one's own supply of grade A milk and processes and packages the milk for retail trade.
4. "Dock" means dock at the plant of a processor where milk products and frozen dairy products are actually processed and packaged.
5. "Dumpage" or "skim dumped" means that amount of skim milk dumped or otherwise destroyed after separation and without further processing or usage.
6. "Excess milk" means that amount of milk delivered to a plant by a dairy farmer in excess of the farmer's specified base or quota.
7. "Hauler" means any person transporting milk produced by grade A dairy farmers from farm-to-plant or from plant-to-plant.
8. "Import distributor" or "import jobber" means a distributor who purchases milk already processed and packaged for resale to wholesale and retail customers from a source or sources whose headquarters are geographically located outside the boundaries of North Dakota.
9. "Jobber" means any independent businessman other than a store, wholesale grocery purchasing organization, or wholesale grocery broker, who has no financial connection with any processor other than acquiring the processor's packaged product and distributing and selling the packaged product, and whose business practices and policies are within the businessman's exclusive province to establish, and not subject to any influence or control from the processor.
10. "Other source milk" means all milk defined in North Dakota Century Code chapter 4-18.1, and also all reconstituted or recombined milk, condensed milk, and milk and the components of milk other than grade A which is received in a plant from any source other than a licensed grade A dairy farmer.
11. "Overage" means that amount by which milk otherwise accounted for exceeds plant receipts.
12. "Plant" means the plant of a processor.
13. "Plant receipts" means all milk received from licensed dairy farmers, other plants, and other sources, inventory, and all additives used in fluid products.

14. "Shrinkage" means that amount by which receipts exceed milk otherwise accounted for by the plant.
15. "Store" means any grocery, soda fountain, dairy store, confectionary, or similar mercantile establishment, whether rural or urban, which sells milk over the counter or on the premises to customers at retail, and, unless otherwise distinguished herein, includes chain stores, supermarkets, quick service markets, and wholesale food purchasing organizations.
16. "Surplus" means that amount of milk produced for fluid use which exceeds the fluid needs of the market.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-02. Licenses not transferable.** Any license issued by the North Dakota milk stabilization board is the property of the person in whose name the license is issued and is not transferable.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-03. Assessments on sale to a distributor by a processor.** It shall be the duty of every processor selling to a distributor to notify the board of the identity and address of such distributor. As an aid to the efficient collection of assessments, each processor shall be responsible for the payment of assessments due on milk sold to distributors.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-04. Deductions by processors from dairy farmers.** Deductions of any kind from payments due dairy farmers may be made only upon written authorization from dairy farmers, or, in the case of cooperatives, upon formal resolution of the directors at a regular business meeting. A copy of such authorization or resolution shall be retained by the processor as a part of the processor's permanent records for the processor's own protection and for inspection by board representatives.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-05. Invoices on wholesale sales.** Processors, distributors, import distributors, and jobbers delivering to wholesale stops or customers must leave at such wholesale stop or customer an invoice of the sales of fluid milk for each day's delivery, itemized as to number of each separate form or use of milk product sold and the total price of each such form or use sold. In lieu of unit or

total prices each retailer must have on file a current price list from the retailer's various suppliers upon which current billings are computed.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-06. Tests by department of agriculture.** All tests approved by the dairy division of the North Dakota department of agriculture shall be considered by the board as official tests for the purpose of administration of North Dakota Century Code chapter 4-18.1.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-07. Retention of composite samples.** When dairy farmer payments are based upon butterfat tests from composite samples, a portion of each composite sample must be retained until the succeeding composite sample is tested.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-08. Record of butterfat tests.** Each processor must maintain a record of butterfat tests made of each dairy farmer's milk or cream, covering each pay period, such record to be kept on file for three years and be made available to any authorized agent of the board upon request.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-09. Monthly statement from processors to dairy farmers.** Processors purchasing milk from dairy farmers shall render to each dairy farmer not later than the fifteenth day of each month, statements containing each of the following items:

1. Name and address of processor issuing the statement.
2. Date of statement.
3. Period for which statement is rendered.
4. Name of dairy farmer for whom the statement is intended.
5. Dairy farmer butterfat test for the first half of the month or other test period.
6. Dairy farmer butterfat test for the last half of the month or other test period.

7. The weighted-average butterfat test of the dairy farmer for the month for which the statement is rendered.
8. Percentage of milk or skim milk and fat utilized in each classification or, in the alternative, pounds of milk or skim milk and butterfat utilized in each classification. Plants fully regulated by federal order may report information required by such federal order.
9. Rate paid for milk at test for each classification as established by applicable official order or by the plant. Plants fully regulated by federal order may report federal order blend price.
10. Total pounds of milk purchased from dairy farmer.
11. Amounts paid as premiums, bonuses, etc.
12. Gross amounts paid after addition of premiums, etc.
13. Itemization of advance payments and authorized deductions.
14. Net amount paid.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-10. Monthly report by processors to the board.** On or before the twentieth day of each month in the detail and on forms supplied by the board, each processor shall submit to the board a report of the following receipts, uses, sales, and transactions for the preceding month:

1. The quantities of milk, butterfat, and skim milk received from dairy farmers.
2. The quantities of milk, butterfat, and skim milk contained in the milk and products received from other processors.
3. The quantities of milk, butterfat, and skim milk contained in other source milk received (except nonfluid milk products of the types disposed of in the form in which received without further processing by the processor).
4. Bulk milk and packaged milk inventories on hand at the beginning of each month.
5. The utilization of all skim milk and butterfat required to be reported pursuant to this section, including the bulk milk and packaged milk inventories on hand at the end of the month.

6. A unit breakdown of Class I and Class II sales, both bulk and packaged sold to other processors, in North Dakota, and distributors located outside North Dakota.
7. Such other information with respect to such receipts and utilization as the board may prescribe.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-11. Monthly dairy farmer statement.** On or before the twentieth day of each month each processor shall submit to the board a duplicate copy of the processor's individual statements to dairy farmers with all of the information required in section 51-02-01-09.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-12. Monthly report of foreign milk coming under North Dakota Century Code chapter 4-18.1.**

1. Each processor whose place of business is outside North Dakota, but who comes under the jurisdiction of North Dakota Century Code chapter 4-18.1, and of this chapter by virtue of the processor's distributing milk within North Dakota, or by supplying a distributor home based in North Dakota either in bulk or packaged form, must file with the board, on forms supplied by the board, on or before the twentieth day of each month, a report of sales of milk subject to North Dakota Century Code chapter 4-18.1 during the preceding month.
2. Each import distributor or import jobber who purchases milk from sources outside North Dakota for resale in North Dakota must file with the board, (unless the importer's supplying distributor reports for the importer) on forms supplied by the board, on or before the twentieth day of each month, a report of sales of such milk during the preceding month.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-13. Monthly report of distributors, jobbers, and dairy farmer-processor.**

1. Each distributor or jobber who receives or purchases milk in packaged form, and who does not receive or purchase milk from dairy farmers, must file with the board, (unless the distributor's or jobber's supplying processor reports for the distributor or jobber) on forms supplied by the board, on or before the twentieth day of each month, a report of sales of such milk during the preceding month.

2. Each dairy farmer-processor shall file with the board, on forms supplied by the board, on or before the twentieth day of each month, a report of the dairy farmer-processor's Class I and II sales and disposition of production in excess of Class I and II sales during the preceding month

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-14. Annual report of wholesale accounts.** On July first of each year all processors, distributors, jobbers, and dairy farmer-processors selling milk products and frozen dairy products to wholesale accounts in North Dakota shall furnish the board a list of their wholesale accounts for the purpose of determining that retailers are properly licensed by the board.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-15. Payment of dairy farmers by processors.** Dairy farmers shall be paid twice a month as follows: A payment or advance that approximately covers the value of the milk or cream purchased during the first two weeks of the processor's monthly pay period, less one half of the approximate monthly deductions herein sanctioned, must be paid not later than thirty days after the start of the processor's monthly pay period. Such payment need not be accompanied by an itemized statement. All milk and cream purchased during the balance of the processor's monthly pay period shall be paid for not later than fifteen days after the close of the processor's monthly pay period. Such payment shall include the balance of all amounts due from the first fifteen days of the monthly pay period and must be accompanied by an itemized statement to each dairy farmer setting forth the information required in section 51-02-01-09. All payment dates for processing plants located within a Federal Market Order shall conform to Federal Market Order regulations.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-16. Auditing procedure.**

1. The board shall cause periodic audits of the books and records of the processors to be made to verify the utilization of all milk reported pursuant to section 51-02-01-10, and thereby establish payment or nonpayment of minimum dairy farmer prices fixed by official orders of the board.
2. Overpayments made by processors to dairy farmers not offset against underpayments or otherwise collected by the processor within ninety days after final settlement of the board's audit or the period during which the overpayment was determined will not be credited to the processor in any subsequent audits.

3. Upon completion of each audit the processor will be furnished with an audit summary and commentary with respect to the audit results and with indicated dairy farmer adjustments, if any, for each month audited. All underpayments settlements shall be paid to dairy farmers on or before the next regular pay date and proof of such settlement payments shall be filed with the board by the processor forthwith.
4. At any time a processor is unwilling or unable to reconcile the audit results with official orders of the board, the processor may request a review of the audit by the executive secretary. The time limitation for final settlement payment to dairy farmers will be stayed until ten days after such review is completed and the processor has received notice of the executive secretary's decision.
5. Within ten days after the processor receives notice of the executive secretary's decision, the processor may file written application for appearance before the board at its next regular meeting to review the decision of the executive secretary. The time limitation on final settlement payment to dairy farmers will be further stayed until review by the board is completed.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-17. Base or quota plans.** A processor and the processor's dairy farmers may establish a system of level or uniform milk production, or base, in accordance with the fluid milk requirements of the processor, which provides for and assures in its terms and conditions priority to fluid milk requirements and the equitable distribution of such fluid milk requirements among dairy farmers; provided the milk processor and at least seventy-five percent of the processor's dairy farmers first make a formal application to the board and receive a written authorization to do so.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-18. Pooling.** Each dairy farmer whose milk is pooled with milk from other sources supplying a nonbase or nonquota processor shall be credited with a pro rata share of the milk allocated to that processor's Class I usage. Each dairy farmer whose milk is pooled with the milk from other sources supplying a processor pursuant to a base or quota marketing plan shall be credited with either the dairy farmer's base specified in the processor's base or quota program, or the dairy farmer's actual deliveries, whichever is less. Where the processor has a base or quota program, all Class I milk assigned the processor's pool will be deemed to have been supplied first either from base milk of licensed dairy farmers or from actual deliveries of the processor's licensed dairy farmers, whichever is less. Where the processor has a base or quota program and the total amount of Class I milk used exceeds the total amount of base milk received from licensed dairy farmers

and credited to other sources, the additional milk will be treated as having been supplied from excess milk over base.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-19. Allocation of dairy farmer milk.** For the purpose of dairy farmer pricing, no processor will be permitted to allocate milk purchased from sources other than the processor's regular dairy farmers, including milk purchased from the processor's own farm to a higher use classification than the use classification allocated to the processor's regular dairy farmers.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-20. Allocation of other source milk.** For the purpose of dairy farmer pricing, no processor shall allocate other source milk to an ultimate use classification which is higher than the ultimate use classification allocated to grade A milk.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-21. Rejection of dairy farmer milk.** Inferior quality or noncompliance with regulations of state health or sanitation agencies shall be reasons for the rejecting of dairy farmer milk. In all cases the milk shall be rejected at the farm and before commingling. The reasons for rejecting or down grading shall be given on the producer's monthly statement. This section does not apply to bulk tanker loads or packaged milk condemned by competent authority such as the state dairy commissioner, city, county, or state health units, the state laboratories department, livestock sanitary board, etc.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15

**51-02-01-22. Interpretation.** If any portion of this chapter is held invalid or unconstitutional, such holding shall not affect the validity of the chapter as a whole, or of any part thereof which can be given effect without the part so held to be unconstitutional or invalid.

**General Authority:** NDCC 4-18.1-01, 4-18.1-15

**Law Implemented:** NDCC 4-18.1-15